Central Administrative Tribunal
Principal Bench, New Delhi

OA No. 3298/2009

This the 10th day of September, 2015

Hon'ble Mr. Justice B.P. Katakay, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member(A)

Ram Pal
S/o late Shri Pyare Lal,
R/o H. No.877, Krishna Nagar (Baggu),
Bypass Road, Vijay Nagar, (Near Sales Tax Chungi),
Ghaziabad.

-Applicant

(By Advocate Shri U. Srivastava)

Versus

1. Union of India through the Secretary,
Ministry of Defence Production,
New Delhi.

2. The Director General,
Ordnance Factories Board,
10-A, Auckland Road, Kolkata.

3. The General Manager,
Ordnance Factory, Murad nagar,
Ghaziabad, U P.

-Respondents

(By Advocate Shri V.S.R. Krishna)

ORDER (ORAL)

By Hon'ble Justice B.P. Katakey, Member (J):

This OA has been filed challenging the Order dated 12.11.2008 passed by the Disciplinary Authority imposing the penalty of reduction of pay by five steps below, for one year from the date of issuance of the said order, with cumulative effect.

2. A departmental proceeding was initiated by the disciplinary authority against the applicant by issuing the charge memo dated 13.05.2006, under Rule 14 of the CCS(CC&A), Rule 1965, on the allegation that; (i) he was found to have been engaged in criminal case despite being Government Employee, (ii) he has not informed the administration of his being engaged in criminal case, and (iii) for his negligent attitude, indiscipline behavior being a Govt. Employee. The applicant on receipt of the charge memo filed his reply denying the charges leveled against him.

3. The disciplinary authority being not satisfied with the reply submitted by the applicant decided to proceed with the disciplinary proceedings and hence an enquiry officer was appointed to conduct the enquiry. The enquiry officer, on completion of the enquiry, submitted his report on 05.06.2008 holding that while the charges no. 1 & 3 are not proved, charge no. 2, however, has been proved. The finding of the enquiry officer relating to charge No.2 is reproduced below:

> " The DGS after his arrest has not hidden about his arrest as is evident from the newspaper report. He has also attempted to inform the administration immediately after his arrest by Police. He was charged of a very grave crime by Indira Puram Police on 10.02.2006 which he had not committed and he was kept in police custody where he was also tortured by police and kept in jail w.e.f. 11.02.2006 to 06.10.2007. In the District Jail he did not have any access to telephone or any other means for sending message. He could meet his relatives/ lawyers in jail only after 10-15 days. Under the above circumstances he was not in a position to send information to Ordinance Factory Muradnagar, Administration for at least 10-15 days of his arrest.

> While his stay in jail, he was under mental tension and his mind occupied with fearful thoughts about the threat to his life and he did not pay attention about sending intimation on the General Manager although there was clear possibility of same after 10-15 days, when he met his lawyers/relatives. Thus, it is clear that the DGS although did not intend to hide the information of his arrest but he has failed to inform OFM Administration. Hence the charges given at article of charges 2 above stands proved."

4. Disciplinary authority, thereafter, passed the order dated 12.11.2008 imposing penalty, as aforesaid, by taking charges No. 2 & 3 leveled against the applicant as proved, though charge no. 2 only was found to have been proved by the enquiry officer in his report. The departmental appellate authority, on appeal by the applicant vide order dated 01.06.2009 reduced the penalty to reductions of pay by two stages for a period of one year

5. The applicant being aggrieved approached this Tribunal in this OA challenging the aforesaid orders dated 12.11.2008 and 01.06.2009. This OA was earlier allowed by this Tribunal vide order dated 04.06.2010 by setting aside the aforesaid two orders. Being aggrieved, the respondents approached Hon'ble High Court of Delhi in Writ Petition No. 8432/2010, which was disposed of vide order dated 21.08.2013, directing the Tribunal to proceed to decide the OA afresh by treating that only charge no. 2 has been proved, upon setting aside the order dated 16.09.2010 as well as the main order dated 04.06.2010 passed in this OA. Hence, the matter has been listed today for hearing.

6. Learned counsel appearing for the applicant referring to the report of enquiry officer submits that since there is absolutely no intention on the part of the applicant to hide the information relating to the criminal case, no finding of guilt ought to have recorded on charge no. 2 framed against the applicant, resultantly, the disciplinary and appellate authorities ought not to have imposed the penalty. Learned counsel, therefore, submits that the orders passed by both the aforesaid authorities need to be set aside by this Tribunal. Learned counsel for the applicant referring to the finding recorded by the enquiry officer further submits that there was no intention of hiding the criminal case from the administration as the applicant could not inform under compelling circumstances.

7. Per contra, the learned counsel for the respondents submits that the applicant though had ample opportunity to inform the department about his detention, except for 10-15 days when he was found to be incapacitated to inform, he did not do so. Hence, according to the learned counsel, the enquiry officer was rightly held the charge no. 2 proved. Accordingly, the disciplinary and appellate authorities have rightly passed the impugned orders as aforesaid, which need no interference of this Tribunal, submits the learned counsel.

8. It is evident from the enquiry report dated 04.06.2008, in so far as it relates the finding of charge no. 2, which has been quoted above, that the enquiry officer himself has found that though the applicant had made attempt to inform the administration immediately after his arrest by police, he could not do so as he was under mental tension and had no access to telephone or any other means for sending message. The enquiry officer also found that after about 10 to 15 days only he could meet his relatives and lawyers in jail and thereafter also he could not inform the administration about his detention in custody because of his mental tension and threat to his life. A clear finding has also been recorded by the enquiry officer that the applicant never intended to hide the information of his arrest. Having held so, the enquiry officer ought not to have held that the charge no. 2 framed against the applicant has been proved. Consequently, the disciplinary and departmental appellate authority also should not have imposed the penalty based on such report of the enquiry officer. The said two authorities, as it is evident from the impugned order did not even consider the said aspect of the matter about the applicant having no intention to hide the information about his detention from the administration. There being no intention to hide the information, it cannot be said that he had committed any misconduct so as to invite penal action.

9. In view of the aforesaid discussion we are of the considered opinion that the orders dated 12.11.2008 and 01.06.2009 passed by

the disciplinary authority and departmental appellate authority, respectively, cannot sustain in law. Hence, both the aforesaid orders are set aside. The applicant shall be entitled to all consequential benefits.

10. The OA is accordingly allowed. No cost.

(K.N. Shrivastava)
Member (A)

(Justice B.P. Katakey)
Member (J)

Bhupen/